divisions and unions in possession of the rights, immunities and privileges which legal sanctions give.

The legal provisions and principles applicable to these, the forms by which they are perfected, the measure and mode of redress, remain to be considered hereafter.

WM. LAWRENCE.

BELLEFONTAINE, O.

RECENT AMERICAN DECISIONS.

Supreme Court of Wisconsin.

CONKEY v. MILWAUKEE AND ST. PAUL RAILROAD CO.

A railway company is liable as a common carrier, and is an insurer of the goods, not only while the goods are in actual transit over its line of railway, but unitl an actual delivery of the goods to the next succeeding carrier.

If the succeeding carrier should refuse to accept delivery of the goods, or in case of a break or interruption in the line of transit, as by storm, flood or earthquake, or by fact of war, rendering it impossible to send the goods forward, or causing considerable delay in the transportation, the carrier might relieve itself of its strict liability as a common carrier by storing the goods and notifying the owner or consignor thereof.

The case of *Wood* v. *Railway Company*, 27 Wis. 541, overruled.

THE defendant operating a line of railroad between Milwaukee

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vention of each diocese to prescribe a form of organizing a particular parish. As an example, the form adopted by the Diocese of Missouri will be found in the journal of the 31st Annual Convention of the P. E. Church in the diocese: May 1871, p. 122, Appx. No. 12.

For form in Maryland, see "Compilation," referred to in note 38, *ante*.

Both the Associate and Congregational Churches may have articles of association, and a constitution of the church; and these may be adopted both in the *canonical* and the *legal* organization of a particular church. The form of canonical and legal organization of a parish in the Diocese of Missouri is given in the journal of the Annual Convention above referred to, and in the journal of the Convention of 1871, p. 127, Appx. No. 18, is given the constitution of the church in the diocese regarding it as a diocesan body.

In the [late German] Reformed Church in the United States, the usage is for each congregation to adopt a constitution and by-laws. A form is given in the proceedings of the Synod of Ohio for 1850, p. 71.

The General Synod of 1866 recommended that the constitution should be "embraced in the charters of all the churches:" Proceedings, p. 19. And see Proceedings of Synod of 1869, p. 86, for form of incorporation.

There is a general constitution for the entire church, subject to the legislative power of the General Synod.

and La Crosse, received at Milwaukee goods addressed to the plaintiffs at Preston, Minnesota, to be carried over its line of road to La Crosse, and there delivered to the Southern Minnesota Railroad Company, the next succeeding carrier, in the line of carriage. The goods were so transported over the defendant's line of road to La Crosse, arriving there on the 12th, 13th and 14th days of May 1871, and were placed in defendant's warehouse for delivery to the next succeeding carrier, and while so awaiting carriage were destroyed by fire on the night of the 15th of May.

Jenkins & Elliott, for plaintiffs and respondents.

John W. Cary, for defendant and appellant.

DIXON, C. J.—The learned counsel for the railway company asked permission at the bar, and the request was also joined in by counsel for the plaintiff, and leave was granted by the court, to reargue the point decided in *Wood* v. *Railway Company*, 27 Wis. 541, that where a common carrier conveys goods over only a portion of the route between the places of shipment and consignment and holds them for delivery to some connecting carrier, the liability of the former as a common carrier continues until the goods are ready for delivery to the connecting carrier and until the latter has had a reasonable time to take them away. The "reasonable time" as there defined was said to be the earliest practicable time after the first carrier is ready to deliver, and is not measured by any peculiar circumstances in the condition of the second carrier, requiring for its convenience that it should have a longer time.

Against the rule thus laid down, counsel on both sides in this case, as well as in some others involving the same question, most earnestly and vehemently protest on account of the great uncertainty which must exist in its application to particular cases, and the likelihood of most tedious and expensive litigation which may follow in determining the rights of the owner of the goods or the liability of the carrier in almost every such case of loss. Counsel say, and say truly, that the inquiries of fact upon which the issue is made to depend, are of the most equivocal, perplexing and doubtful character, such as the parties will seldom agree upon, and such as will often divide the jury. They say that the expression, "reasonable time," is suggestive of the most embarrassing vagueness and uncertainty, opening wide the door to speculation

and diversity of opinion in many cases, and that where one jury may say "yes," another upon the very same state of facts may answer "no," whilst a third may fail to agree altogether. Counsel cry out against this uncertainty, these doubts and embarrassments, and pray that whatever rule may be established, it may be a certain one, freed from these difficulties, and plain and easy of application. It is equally argued on both sides that the rule contended against is a departure from the true principles or policy of the law in such cases.

For the railway company the position assumed is that its liability as carrier should cease whenever the goods are removed from its cars, and thenceforth it should be responsible to the owner for the property in its possession only in the character or capacity of a warehouseman or a depositary for hire. This is the rule in some states, and it has the advantage of that convenience and certainty of application for which counsel contend.

On the other hand, the position taken by counsel for the plaintiff is that the removal and deposit of the goods in the warehouse, preparatory to a delivery of them to the next carrier and for that purpose is a part, and a necessary and indispensable part, according to the method of transportation and conveyance adopted and in use by railway companies and some other carriers, of the act of carriage itself, and that the liability of the last carrier, as such, does not, under ordinary circumstances, cease until the goods have been actually delivered to, or placed in the custody and control or under the management and direction of the next carrier, so that the liability of a common carrier shall have attached to the latter in case of the loss or destruction of the goods from any cause not exempting a common carrier from responsibility. The position assumed in this behalf is that the warehousing, so called, of goods thus in transit over different connecting routes, and which have not reached their place of destination or ultimate delivery, is merely incidental and subsidiary to the principal or main act of carriage, and a part of that act. With respect to goods and property so on the way or going forward, the position, except under extraordinary or peculiar circumstances, recognises no such thing as an interruption of a common carrier's liability or of the protection afforded by that principle of the common law so far as it respects the rights and remedies of the shipper or

owner of the goods. The position rejects entirely the doctrine, as to goods thus in the ordinary course of transit, that the common carrier in whose possession they are, may be now a common carrier and now only a warehouseman, according as the goods may be in motion in the cars or other vehicles, or at rest upon a platform or in a depot or other place of temporary deposit. It ignores entirely the assumption that as to such goods and under such circumstances the carrier can become a mere warehouseman and liable only in that capacity to the shipper or owner, but declares that as to him the character or capacity of common carrier remains unchanged with the possession of the goods, and until the same has been parted with by delivery to the next carrier. It regards depots and other buildings erected by the carrier in which goods passing over the route are thus temporarily housed and protected from loss or damage by the elements as well as from the depredations of thieves and trespassers, as structures for convenience merely of the carrier himself, or not only convenient but essential to his business as a carrier during these pauses or rests made necessary by the system or mode of transportation which now almost universally prevails. It looks upon the warehouses and other buildings and places for storage merely as concomitants of the carrying business, auxiliary and subservient thereto, but not as giving the carrier any distinct or separate character or business with respect to the goods so *en route* and in his possession and custody. It holds the warehouses of railway companies as structures designed to facilitate their business as carriers, by enabling the companies to carry out a system of separation, classification and delivery of goods received and carried, without which there would be no possibility of conducting their carrying business with the requisite precision and despatch, or with any ease or profit.

Such are some of the views, briefly expressed and in my own language, which were urged by the learned counsel for the plaintiff, and such is the rule they would have the court sanction and adopt as the true and sound one in the law. It will be seen, too, that this rule has the same advantage of certainty and of convenience and clearness of application as that propounded and urged by counsel for the railway company.

I must say that I was very forcibly impressed by the arguments on both sides made at the bar, and such was the interest awakened

in my mind that I at once gave the question an attentive and thorough examination, as much so, at least, as my time and capacity, and the means at hand, would permit. I came to the conclusion with counsel on both sides that the rule of *Wood* v. *The Railway Company* could not and ought not to stand, and that, as is most apt to be the case with middle grounds, often of doubtful policy, and more often of dangerous tendency to sound principle, it failed in that clearness, certainty and convenience of application which the true principles of law require and which is indispensable to the facility, safety and confidence of business transactions, and of all commercial dealings and traffic constantly taking place over these great connecting routes of trade and communication. I became satisfied, that however in the various and multiplied turns and complications of human affairs and relations, doubts and uncertainties inhere in and are inseparable from some legal rules, this was a case where they ought not to exist. The rule here, whatever it is, should be definite and certain in its application to all ordinary cases. There is no inherent difficulty in making it so, and the immense interests of the carrying business of the country, as well as of trade and commerce, peremptorily demand it. In the multitude and importance of cases so frequently arising, and which must ever thus continue, parties cannot be delayed to palter and trifle, as it were, in a delusive struggle for their rights over nice distinctions of fact and fine shades of difference, which fade away into regions of obscurity, and finally of total darkness, and which facts, when settled, settle nothing after all but the particular case, leaving all others to be contested and litigated over and over again upon the very same grounds. I agree, therefore, with counsel on both sides when they say the expenses attending this course of decision, or the litigation which must follow, would be enormous, and that this alone, without considering the other inconveniences and mischiefs to which allusion has been made, is sufficient to condemn the rule. I agree that any rule unnecessarily fraught with such evil consequences is a bad one, and should be abandoned. This is another of the numerous actions springing from the same unfortunate loss or destruction of property, as in *Wood* v. *The Railway Company.*

The question comes up, therefore, which of the two rules propounded by counsel is the correct one and ought to be adopted,

for I conceive that I must in this case act upon and determine the rights and liabilities of the parties according to one or the other. In *Woods* v. *The Railway Company*, I assented to the rule laid down not because I thought there was or could be, under ordinary circumstances, a pause or cessation in the common carrier liability with respect to the consignee or owner of the goods, during such temporary rest and storage of them preparatory to delivery to the next carrier, and during which also there would spring up and exist only a warehouseman's or forwarder's liability, but I did so on the supposition that the carrier's liability was to be continuous until the goods reached their place of final destination, and where they were to be delivered to the consignee or owner. My supposition and view was that the liability of the next carrier in the connecting line or route, *as a carrier*, would attach the very moment that of the last carrier, as such, would cease. In other words, I considered that whenever the liability of the last carrier, as such, ceased by lapse of reasonable time for the next carrier to receive and carry forward the goods according to the usual course of transportation and business after the goods were ready for delivery to him, the liability of the latter as a carrier attached, and he must be held to respond to the consignee or owner for their value in case of the subsequent loss or destruction of them. Such was my consideration of the question, and I placed it, not upon the ground that the next carrier had become or was in any sense the agent of the consignee, owner or shipper of the goods, and in that character responsible to him for not receiving and carrying them forward; but upon the ground of the usage and custom among carriers so related to and connected with each other in the business of transportation that their lines or routes, though separately owned and managed, yet running into and touching or uniting one with another in practical operation and effect, constitute one continuous route. The usage among carriers so connected or joining their routes, in the absence of special contract or special notice to the contrary, is not only well known in commercial and business circles, but is also known and acted upon by the courts. Courts recognise and give force and effect to to it: *Schneider* v. *Evans*, 25 Wis. 241, and cases there cited. That usage, now become universal or very nearly so, is for the railway company, receiving the goods destined for a place beyond the terminus of its own route, to transport them

over its own road and there deliver them to the next company or carrier in the line of transit, collecting from the latter its own charges for freight and transportation, whereupon the latter becomes invested with a lien upon the goods for the charges so advanced in addition to his rates or charges for the transportation and delivery to the next succeeding carrier, who, in turn advances the charges of the two that have preceded him, and thus the process continues and is repeated until the goods have reached their place of destination and are in the hands of the last carrier ready for delivery to the consignee or owner, subject to payment to such carrier of the accumulated charges of all the preceding carriers over whose routes they have been transported.

Now, it was upon this well-known custom and usage, amounting, as it does, to an implied contract or promise on the part of each succeeding carrier to pay back charges and receive and carry forward the goods brought to it by the preceding one, that I relied as constituting the true ground of action or liability against the succeeding carrier in case he unreasonably failed to receive and carry forward the goods according to his implied contract or obligation, and as he had held himself out as ready and willing, and promising to do. That contract or obligation I then thought, and still think, created a liability on his part, coextensive with and similar in nature to his liability as a common carrier, in case he neglected or refused, in proper time and according to the usual course of business, to receive the goods, and they were afterwards and before coming to his possession lost or destroyed. I then looked upon his liability, and still do, as being in extent the same as if the loss or destruction had been of the goods in his custody and possession as a common carrier. It was to my mind like the case of goods delivered to a carrier for transportation, and which were destroyed before the transit commenced. By the law of common carriers, their liability is fixed on receipt of the goods, and if they are lost in the warehouse of the carrier or elsewhere before the carriage commences, the carrier must respond, unless the loss was caused by a force superior to and beyond human agency and foresight, or by the public enemy, the *onus* of showing which is upon the carrier: *Blossom* v. *Griffin*, 13 N. Y. 569; *Ladue* v. *Griffith*, 25 Id. 364. I regarded the goods when separated and set apart in the accustomed place in the warehouse, and ready for delivery by the preceding carrier,

and after a reasonable time had elapsed for the succeeding one to receive them, and when in the due course of business he should have done so, as being *pro hac vice*, if need be, in the warehouse of the latter awaiting transportation by him, or if necessary, for the purpose of the remedy constructively in his possession as a common carrier.

Such were the views which I then entertained, and I have as yet discovered no good reason for changing them. I then thought, and still think, that the loss, if possible, should be made to fall on the carrier in fault, or him who appeared most so, and it was for this reason I assented to the rule that the last carrier should be held responsible, as such, only until a reasonable time had elapsed for the next carrier to receive the goods, and not after that time. I was not disposed to make the last carrier responsible, without remedy for the faults and delinquencies of the next, over whose movements and conduct he had no control. It was upon this principle I yielded assent to the rule, and it did not occur to me then there was any better or more satisfactory solution of the difficulty.

It will be seen hence I did not assent to the rule on the ground that the next carrier was the agent of the owner for the purpose of receiving such delivery, which seems quite impossible. The agency in such cases springs from the possession of the goods in the hands of a carrier marked for some place beyond the terminus of his own route. Such carrier, from the fact of possession, becomes the agent of the owner for the purpose of making or tendering delivery of the goods to the next in the proper line of transit. By the usage of the business in which he is engaged he assumes to do that when he receives the goods, and it may properly enough be said to constitute a part of his undertakings as carrier. The decision in *Schneider* v. *Evans*, means just this and nothing more, and Mr. Justice LYON himself now concedes the error in the application. Had particular attention been directed to it at the time, it would undoubtedly have been corrected.

But the difficulties in the way of applying the rule are manifest and manifold. It casts upon the owner of the goods the burden and the risks of settling the rights and liabilities as between the different carriers. It imposes upon him a task which in nearly every case he will have no adequate or proper means of perform-

ing. He is often a stranger, residing in a distant part of the country, and wholly unacquainted with the facts. Actual knowledge of the facts and of the particular system or mode of transacting the business, rests only with the agents and employees of the carriers, and being adversely interested, it is not to be expected they will be free to communicate what they may know. Indeed, it must be presumed they will refuse to give information of facts which will charge their employers, if they know such facts.

And a result of the rule may be to deprive the owner of all remedy for the loss or destruction of his property after he has mulcted himself in two heavy bills of costs. He may come out like Mr. Bromley with his portmanteau, with no right of action against either carrier: *Midland Railway Co.* v. *Bromley*, 8 J. Scott 372 (84 E. C. L. 372, 382, note *e.*) A verdict and judgment in an action against the last carrier settles nothing in a suit against the next. In an action against the last the jury may find that a reasonable time had elapsed, and in a suit against the next they may find the reverse, and so the owner falls between two fires.

And again the question arises, what is the proper way out of these difficulties? I have examined not only the cases cited but very many others, and have pondered the question well, at least as well as I am capable of doing, as between the two rules laid down by counsel, neither of which is unsupported by authority, and my conclusion is that the rule contended for by counsel for the plaintiff is the correct and true one. In coming to this conclusion I have anxiously endeavored to recognise a rule which, while it shall not prove injurious and embarrassing to the great commercial interests of the country, shall, at the same time, protect the interests of the carriers, or, at all events, be of so much aid and service to them that the proprietors of that interest shall know and understand with clearness and certainty the full extent of their obligations to the public.

I think in the absence of special contract or agreement to the contrary, the true policy of the law, now as much as ever and even more, is to adhere to the strict rules of liability on the part of common carriers established by the common law. I believe the safety and protection of the trade and commerce of the country demand this, and I believe also that by the feeling of confi-

dence and security thus created and given, the great carrying interests of the country will be likewise ultimately benefited and their prosperity promoted. I believe the true policy of the law consists with giving the owner a certain, sure and ample remedy in case of the loss or destruction of his goods while in the hands of the carrier, and hence I reject the rule contended for by counsel for the railway company, because it is calculated to give the owner anything but such remedy. To admit the change in capacity and liability from carrier to warehouseman at every pause in the carriage over our long connected routes, would in practice and effect be to say to the owner that he has no remedy. To recover as against a warehouseman, the burden would be upon the owner to establish the negligence. He must aver and prove that his goods were negligently lost or destroyed, which, except in very rare instances, would be an utter impossibility, even though the fact of negligence might exist. It would be better far to inform him he is without relief, than to deceive him with a remedy like this.

To admit such interruptions of the liability of the carrier would make clear the way for the grossest frauds and imposition, with no means of protection and no power of discovery on the part of the owner. He is always absent. He does not go with his goods, and cannot be permitted to do so. He must trust them absolutely and exclusively to the keeping of the carrier. Whether they were lost or destroyed when in motion or on the way, or while in a warehouse, he could not tell, and it would generally be a secret past his finding out. He would be wholly in the power and at the mercy of the carrier, and if the carrier said they were destroyed in a burning warehouse or depot, he must abandon all claim. This would be placing too great power in the hands as well as too great temptations in the way of carriers.

"It is well settled in this state," says Mr. Commissioner EARL in delivering the opinion of the commission of appeals in *Fenner* v. *Railroad Company*, 44 New York 505, "that an intermediate carrier, one who receives goods to be transported over his route, and thence by other carriers to their place of destination, generally remains liable as a common carrier until he has delivered the goods to the next carrier. It was deemed wise policy that the principles of the common law should be so expounded and applied, that the liability of one carrier should

continue until that of the next carrier commenced." The learned commissioner cites *Miller* v. *Steam Navigation Co.*, 10 N. Y. 431; *Gould* v. *Chapin*, 20 Id. 266; *La Duc* v. *Griffith*, 25 Id. 364, and *McDonald* v. *Western Railroad Corporation*, 34 Id. 497, and then proceeds with a quotation of the language of Chief Justice JOHNSON in *Gould* v. *Chapin* as follows: "No owner can be supposed to have an agent to superintend such transhipment of his goods, in the course of a long line of transportation; and if the responsibility of each carrier is not continued until delivery in fact to the next carrier, or at least until the first carrier, by some act clearly indicating his purpose, terminates his relation as carrier, we shall greatly diminish the security and convenience of those whose property is necessarily abandoned to others, with no safeguards save those which the rules of law afford."

And next the commissioner quotes the language of Judge SMITH in *McDonald* v. *The Western Railroad Corporation*, which is this: "The owner loses sight of his goods when he delivers them to the first carrier, and has no means of learning their whereabouts till he or the consignee is informed of their arrival at the place of destination. At each successive point of transfer from one carrier to another, they are liable to be placed in warehouses, there, perhaps, to be delayed by the accumulation of freight, or other causes, and exposed to loss by fire or theft, without fault on the part of the carrier or his agents. Superadded to these risks, are the dangers of loss by collision, quite as imminent while the goods are thus stored at some point unknown to the owner as while they are in actual transit. As a general rule, the storing under such circumstances should be held to be a mere accessory to the transportation, and the goods should be under the protection of the rule which makes the carrier liable, as an insurer, from the time the owner transfers their possession to the first carrier till they are delivered at the end of the route."

And here it occurs to me to observe that among the great number of such cases which have arisen and been adjudicated by the courts of New York, not one has yet been presented where the intermediate carrier has been exonerated from liability as a carrier for goods lost or destroyed while in store or on deposit by such carrier. The case of *Mills* v. *Railroad Company*, 45 N. Y. 672, cited by counsel for the plaintiff in this action, would

seem to have been a pretty strong one for declaring an exception, but yet the court refuses. The case of an *adjudicated* exception is yet to come, for thus far the doctrine rests upon mere suggestions or hints, vaguely thrown out, and nothing more.

And the case of *Nashua Sack Company* v. *Railroad Company*, 48 N. H. 339, is a most elaborate and powerfully reasoned one, many of the arguments and views of which very strongly favor my conclusion. It contains a review and examination of most of the leading authorities, English and American, and a statement of the doctrines of the courts on both sides of the Atlantic. I must say that I think Mr. Chief Justice PERLEY performed a very great and valuable service, both for the profession and for the law, when he wrote that opinion.

And the case of *Baxter* v. *Wheeler*, 49 N. H. 6, is another case most elaborately and well considered, as is the manner of that court, which also favors my views. I need only refer to these two last cases for a full and ample vindication of the principles by which I think the present one ought to be governed.

In England the question presented in this case has never to my knowledge been considered, since under the rule in *Muschamp's Case*, 8 M. & W. 421, it could not well arise. The first carrier there is liable as such, for the safety of the goods throughout the transit and until they are delivered at the place of destination, which is of course a sufficient protection of the rights of the owner or consignee. The English rule has also, I believe, been applied in Illinois.

Now in the present case, I think the law should hold the carrier in whose possession the goods were destroyed, responsible to the owner or consignee for their value as a carrier or insurer of the goods, leaving such carrier to seek his remedy against the next carrier in the route or line of transit, in case it was the fault of the latter that the goods were not removed in due time as regulated by the course of business and the usage and practice prevailing among carriers. In this way the burden of settling those hazardous and uncertain questions would be thrown upon the carriers themselves, where it belongs. They are the parties who know the facts, or have ample means of ascertaining what they are. In this way also multiplicity of actions would be saved, for as between the carriers themselves the controversy could be settled in one action. I have no doubt that upon the usage and custom

above spoken of or upon the implied contract or obligation growing out of it, one carrier may maintain his action against another under such circumstances.

As I have limited the rule which I regard as the true one, to ordinary cases, or those arising under ordinary circumstances, it may be proper, perhaps, that I should suggest what would seem to me to be an extraordinary one. I should say that in a case of a break or interruption in the line of transit or communication, as by storm, flood or earthquake, or by fact of war, rendering it impossible to send the goods forward or making considerable delay in the transportation necessary, the carrier might store the goods, and at once give notice to the consignee or owner, and thus absolve himself from liability as a carrier. Other cases of an extraordinary nature might also occur; I only suggest these.

I think the judgment should be affirmed.

COLE, J.—I concur with the Chief Justice in the rule of law which gives the owner or consignee the continuous liability of a common carrier while the goods are in transit, and that the judgment must be affirmed.

LYON, J.—I concur in the affirmance of the judgment of the Circuit Court, but am inclined to adhere to the doctrine asserted in the case of *Wood* v. *The Milw. & St. Pet. Railway Co.*, 27 Wis. 541.

The foregoing case is one of interest to the public and to business men connected with railway transportation, inasmuch as it shows the pressure which ill-advised rules, affecting railway traffic, must sooner or later, bring upon the courts, in regard to transactions constantly occurring in that business, and not always sufficiently provided for in the earlier decisions. The rule declared in *Schneider* v. *Evans*, 25 Wis. 241, s. c. 9 Am. Law Reg. N. S. 536, is the one virtually followed in *Wood* v. *The Milw. & St. Pet. Railway*, 27 Wis. 541, allowing each carrier in a connected line of transportation to stand, precisely as if there were no business connection between the different carriers, and which the court now justly repudiate on account of its impracticability. We objected to the rule, in our note to *Schneider* v. *Evans*, when the case appeared in the Register, on account of the impolicy and injustice of allowing the last carrier, in a continuous line, to repudiate the contract of the first carrier, in regard to the amount of the entire freight, and to turn over the owner to seek his redress of the party with whom he made his contract. The court have now overruled the case of *Wood* v. *The Railway*, *supra*, upon the ground that it is turning over the owner to hunt for redress, in a matter which the carriers ought to arrange among themselves; the very ground of our objection to the decision in *Schneider* v. *Evans*; and we cannot comprehend why the objection is not a

valid one against both decisions. We are glad the court have had the manliness to review this ground, and to place the matter on the true ground, which, if we understand it fully, comes virtually to this, that so long as different railway companies keep up a continuous line of transportation, and all the companies are constantly in the practice of accepting freight for transportation over the other lines, and this is done with the knowledge and assent of all the connecting companies, each must be held to be the authorized agent of the others, and his contracts on their behalf will bind them. And further, so long as these companies hold themselves out as such continuous line, and accept goods to pass in their transit, from the line of one company to the other, they must arrange the transmission of the same, from one company to the other, among themselves; so that the owner shall have the responsibility of a continuous succession of common carriers. It is, no doubt, the true policy of the law to afford this security to the public as far as practicable, without too great departure from established precedents.

The great question will always be in putting goods into warehouses by carriers, as to the after responsibility, whether this warehousing is done for the convenience of the carrier, as a necessary or convenient part of the transportation, or is done merely for the security of the owner, after the carrier's duty has terminated. Under the former modes of transportation, in wagons, and when there were no business connections between the different lines, it often happened that considerable time elapsed between the arrival of goods on one line and the departure upon another upon which they were to go. In such cases it was natural and just to treat the first carrier, after his duty, as carrier, had terminated, to act as the agent of the owner for the purpose of forwarding the goods by another destined line, and to treat the warehousing, at such intermediate point, as "not for the convenience of the carriers, but of the owner of the goods," in the language of BULLER, J., in *Garside* v. *Trent & Mersey Nav. Co.*, 4 T. R. 583. But under the present arrangements in railway transportation, there is no occasion for any delay in passing goods from the line of one company to that of another upon a continuous route, unless it be for the convenience of the carriers, and in such cases it has always been held the carrier is responsible, as carrier, and not as mere warehouseman or forwarder. There is no conflict in the cases that the common carrier, who receives goods for immediate transportation, is responsible, as carrier, from the time he receives the goods. And he will be held responsible as carrier, while he keeps them in warehouse, for his own convenience: *Moses* v. *Boston & Maine Ry.*, 32 N. H. 523; s. c. 2 Redf. Am. Railway Cases 165; *Clarke* v. *Needles*, 25 Penn. St. 338; *Blossom* v. *Griffin*, 3 Kernan 569; *Stewart* v. *Bremer*, 63 Penn. St. 268.

But when the first carrier is once charged with the custody of the goods to pass over a continuous line, his responsibility will continue, until he discharges himself by placing the goods in the actual, or constructive, custody of the next carrier; in other words, until he charges the next carrier: *Maybin* v. *S. C. Ry.*, 8 Rich. 240; *Barter* v. *Wheeler*. 49 N. H. 9; *McLaren* v. *D. & M. Ry.*, 23 Wisconsin 138; *Teal* v. *Sears*, 9 Barb. 317; *Lock Co.* v. *Wor. & Nashua Ry.*, 48 N. H. 339; s. c. 10 Am. Law. Reg. N. S. 244; 2 Redf. Am. Railway Cases 290. The cases are very numerous bearing in this general direction, and need not be further cited. The case of *Wood* v. *The Railway*, 27 Wis. 541, which is so severely handled, both by court and counsel, in the principal case, does not seem to us specially faulty, except in making the next carrier the agent of the owner to effect the delivery to himself.

The true view unquestionably is, that the law casts a public duty upon carriers, in a continuous line, to effect the transfer from each preceding to the succeeding line, in the shortest reasonable time, and holds the first carrier responsible as such, until this is effected; and so on throughout the line. It is therefore the duty of each preceding carrier to place the goods, immediately upon their arrival at the end of his route, in the custody of the next carrier, or at least to so tender them to such carrier as to secure a refusal to accept, which may render the second carrier responsible for the safety of the goods or for all loss or damage resulting from his refusal to accept them. We are not so sanguine as some, in regard to courts being able to discover such rules of law in regard to the duties of carriers, as to eliminate all uncertainties, and thus render the administration of the law hereafter a matter of plain sailing. This has been attempted a great many times, in regard to different subjects in the law, in the last two hundred years, and we are not sure, that the uncertainties of the law have essentially diminished in that time, but it is no doubt the duty of courts to adopt rules as easy and certain in their application as possible; but without departing from the true principles of legal justice. If certainty is sought, at the expense of principle, it will be found to have been obtained at too dear a rate. We do not object to the rule laid down in the principal case. It is substantially the same for which we have always contended; that a "continuous liability of carriers should be kept up throughout the line, which it seems to us is the true policy of the law on this subject:" 2 Railw. 75, p. 175, pl. 13. But we may be allowed to say, that we always feel some alarm, when we find any rule of law attacked mainly upon the ground of its uncertainty and the difficulty of its application. We regard it as a threatened invasion of established principles, for the sake of convenience.

I. F. R.

United States Circuit Court, Southern District of New York.

BEAN, ASSIGNEE, *v.* AMSINK ET AL.

Where a composition is made by creditors with a debtor, any security or advantage given to a particular creditor, not provided for in the terms of the composition and not disclosed, is void, both as to the other creditors and as to the debtor.

Creditors agreed to accept 70 per cent. in notes, payable at six, twelve and eighteen months. One of the creditors, in pursuance of a previous agreement, gave back the notes for the 70 per cent. and took notes for 50 per cent. payable in 60 days. These notes were paid but the debtor being unable to meet the six-month notes, was adjudicated a bankrupt. *Held*, that his assignee could recover back the money paid to the creditor on the sixty-day notes.

THIS was a bill in equity by the assignee in bankruptcy of Kintzing & Co., to recover back money paid defendants in fraud of a composition deed.

In February 1869 Kintzing & Co., of St. Louis, Mo., having become embarrassed, presented to their creditors a composition